

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 05-0038**  
**Withholding Tax**  
**Responsible Officer**  
**For the Tax Period 1999**

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**ISSUE**

**1. Withholding Tax-Responsible Officer Liability**

**Authority:** IC 6-8.1-5-1(b), IC 6-3-4-8(f).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

**STATEMENT OF FACTS**

The taxpayer was an employee of a corporation that did not remit the proper amount of withholding taxes during the tax periods of July and August, 1999. The Indiana Department of Revenue assessed the unpaid withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax and a hearing was held.

**1. Withholding Tax-Responsible Officer Liability**

**Discussion**

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The taxpayer produced substantial documentation that she terminated her employment with the corporation prior to the tax period. Therefore, she had no duty to collect and remit withholding taxes to the state. She is not personally responsible for the payment of the corporate withholding taxes.

**Finding**

The taxpayer's protest is sustained.